

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

THOMAS SHEPPHEARD,)
TYLER RANDALL, and)
ADAM PERRY, next friend and guardian of)
Minor child J.P., on their own behalf)
and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

Civil Action No. 5:23-cv-00530

JAMES C. JUSTICE JR., his official capacity)
as Governor of the State of West Virginia, and)
MARK SORSAIA, in his official capacity)
as the Cabinet Secretary of the West Virginia)
Department of Homeland Security,)

Defendants.)

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW, Plaintiffs Thomas Sheppheard; Tyler Randall; and J.R., a Minor (hereinafter sometimes collectively, “Plaintiffs”) by the undersigned counsel, and for their Complaint for Declaratory and Injunctive Relief state as follows:

I. JURISDICTION AND VENUE

1. This is a civil action for declaratory and injunctive relief arising under the Eighth and Fourteenth Amendments of the Constitution of the United States and under the Civil Rights Act, 42 U.S.C. § 1983.

2. This action is brought on behalf of currently incarcerated inmates housed in state prison facilities, jail facilities, and juvenile centers throughout West Virginia. These facilities are administered by the West Virginia Division of Corrections and Rehabilitation (hereinafter

“WVDOCR”). Specifically, plaintiffs seek to ensure that prisons, jails, and juvenile centers in West Virginia promptly alleviate the pervasive and unconstitutional conditions of overcrowding, understaffing, and deferred maintenance at all of the facilities. These conditions are a violation of the Eighth and Fourteenth Amendments of the United States Constitution, and evidence the State’s deliberate indifference to plaintiffs’ health and safety as a result of the conditions of confinement in its correctional facilities.

3. Declaratory and injunctive relief are authorized pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rules of Civil Procedure 57 and 65.

4. Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper because some of the above-named Defendants reside within the Southern District of West Virginia, Beckley Division, and because the incidents giving rise to this Complaint occurred within the Southern District of West Virginia, Beckley Division.

II. PARTIES

7. Plaintiff Thomas Sheppheard, (hereinafter “Plaintiff Sheppheard”) was at all times relevant hereto an inmate incarcerated at Mt. Olive Correctional Complex (hereinafter “MOCC”) in Fayette County, West Virginia.

8. Plaintiff Tyler Randall, (hereinafter “Plaintiff Randall”) was at all times relevant hereto an inmate incarcerated at Southwestern Regional Jail (hereinafter “Southwestern”) in Logan County, West Virginia.

9. Plaintiff J.P., by and through Adam Perry his next friend and guardian (hereinafter “Plaintiff J.P.”) was at all times relevant hereto an inmate incarcerated at Donald R. Kuhn Juvenile Center (hereinafter “Kuhn”) in Boone County, West Virginia.

10. Defendant James C. Justice Jr. (hereinafter “Governor Justice”) is the duly elected Governor of the State of West Virginia and was at all times relevant hereto acting as Governor and under color of law as the Governor of the State of West Virginia.

11. Governor Justice is responsible for submitting a proposed budget for each fiscal year to the legislature for consideration pursuant to *W. Va. Const. art. VI, § 51*, as well as overseeing and carrying out various executive functions including, *inter alia*, corrections.

12. The Legislature of West Virginia is empowered to appropriate the funds pursuant to *W. Va. Const. art. X, § 3*, including, *inter alia*, West Virginia’s corrections systems.

13. After the budget bill has been finally acted upon by both houses, supplementary appropriation bills may be considered and passed. *W. Va. Const. art. VI, § 51*

14. Governor Justice, who upon information and belief resides in Greenbrier and/ or Kanawha County, West Virginia, is sued in his official capacity.

15. Defendant Mark Sorsaia (hereinafter “Cabinet Secretary Sorsaia”) was at all times relevant hereto the Cabinet Secretary of the West Virginia Department of Homeland Security (hereinafter the “WVDHS”) and was at all times relevant hereto acting within the scope of his employment and under color of law as the Cabinet Secretary of the WVDHS.

16. As Cabinet Secretary of the WVDHS, Cabinet Secretary Sorsaia is charged with providing support, oversight, and guidance to the West Virginia Division of Corrections and Rehabilitation.

17. Cabinet Secretary Sorsaia, who upon information and belief resides in Putnam County, West Virginia, is sued in his official capacity.

18. William K. Marshall, III (hereinafter “Commissioner Marshall”), was appointed by Defendant Justice as Commissioner of the WVDCR on January 19, 2023, and was at all times relevant hereto an employee of the WVDCR and was at all times relevant hereto acting within the scope of his employment and under color of law as the Commissioner of the WVDCR in Defendant Justice’s administration.

19. Defendant Justice’s WVDCR is vested with executive authority and responsibility for the administration, operation, and control of all WVDCR facilities and employees of WVDCR facilities. These duties include establishing, monitoring, and enforcing policy directives and procedures that ensure constitutional confinement and treatment of all individuals in the custody of the WVDCR. See W. Va. Code § 15A-3-4; W. Va. Code § 15A-3-12.

20. The State of West Virginia is charged with ensuring that inmates are subjected to appropriate and humane conditions of confinement while housed in any West Virginia correctional facility.

21. The State of West Virginia is similarly charged with maintaining and operating its correctional facilities in a manner that meets the minimal civilized measure of life’s necessities, by providing, inter alia, beds and bedding for all inmates, appropriate food and access to drinking water, access to basic hygiene products, toilets, showers, and laundry, and providing living conditions free of mold, sink and toilet water, human waste or sewage, rats, insects, and other contaminants for all inmates housed therein.

22. Likewise, the State of West Virginia is tasked by law with ensuring that all correctional facilities (prisons, jails, and juvenile facilities) are free from the conditions of

overcrowding, understaffing, and are properly maintained. It has failed in this regard for over a decade. These facilities are: Central Regional Jail, Denmar Correctional Center, Eastern Regional Jail, Huttonsville Correctional Center, Lakin Correctional Center, McDowell Co. Correctional Center, Mount Olive Correctional Complex, North Central Regional Jail, Northern Regional Jail, Ohio County Correctional center, Potomac Highlands Regional Jail, Pruntytown Correctional Center, St. Mary's Correctional Center, Salem Correctional Center, South Central Regional Jail, Southern Regional Jail, Southwestern Regional Jail, Tygart Valley Regional Jail, Western Regional Jail, Anthony Correctional Center, Charleston Correctional Center, Beckley Correctional Center, Parkersburg Correctional Center, J.M. Chick Buckbee Juvenile Center, Donald R. Kuhn Juvenile Center, Gene Spadaro Juvenile Center, Lorrie Yeager Juvenile Center, Kenneth "Honey" Rubenstein Juvenile Center, Ronald Mulholland Juvenile Center, Robert L. Shell Juvenile Center, Sam Perdue Juvenile Center, Tiger Morton Juvenile Center, and Vicki Douglas Juvenile Center.

23. Plaintiffs demand a bench hearing as soon as possible on all causes of action and requests for relief asserted herein.

III. STATEMENT OF FACTS

24. Plaintiffs hereby incorporate by reference all preceding paragraphs as though fully set forth herein.

Unconstitutional Conditions of Confinement

25. Under the Eighth and Fourteenth Amendments to the United States Constitution, correctional facilities and their staff have a duty to provide inmates with humane conditions of confinement, including, but not limited to, adequate food, clean water, clothing, shelter, sanitation, and medical care. See *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016); *Bell v. Wolfish*,

441 U.S. 520, 545, 99 S. Ct. 1861, 1877 (1979); *Dawson v. Kendrick*, 527 F. Supp. 1252, 1282-84 (S.D. W.Va. 1981).

26. Likewise, correctional facilities and their staff are not permitted to act with deliberate indifference towards the health and safety of inmates. See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Scinto v. Stansberry*, 841 F.3d 219, 226 (4th Cir. 2016).

27. Inmates also have a constitutional right to be reasonably protected from the constant threat of violence and sexual assault while incarcerated. See *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973); *U.S. v. Bailey*, 444 U.S. 394, 423, 100 S. Ct. 624, 641 (1980).

28. Despite these constitutional and statutory requirements, Defendants have subjected inmates housed at all the states correctional facilities and other such facilities throughout the State of West Virginia, including Plaintiffs, to inhumane living conditions, deprived them of basic human necessities, and acted with deliberate indifference towards the health and safety of inmates.

29. Jail overcrowding that causes inmates “to endure genuine privations and hardship over an extended period of time” may give rise to violations of the Eighth and Fourteenth Amendments. See *Dawson*, 527 F. Supp. at 1294-97 (quoting *Wolfish*, 441 U.S. at 542).

30. Brad Douglas has worked in West Virginia’s correctional system for a quarter century. he currently serves as Chief of Staff of WVDCR. Overcrowding, understaffing, and deferred maintenance all have an impact on safety. (Deposition of Brad Douglas taken June 12, 2023 (“Douglas Depo.”), p. 126.) Portions of the deposition are attached hereto as Exhibit 1 and fully incorporated herein.

31. Betsy Jividen served as Commissioner of WVDOCR from January 2018 to July 2022. In 2022, the inmate population was overcrowded and the facilities were understaffed.

(Deposition of Betsy Jividen taken June 30, 2023 (“Jividen Depo.”), pp. 33-34.) The deposition is attached hereto as Exhibit 2 and fully incorporated herein.

32. Betsy Jividen and Brad Douglas testified that the overcrowding has been at least a decade in the making. (Jividen Depo., pp. 169-170; Douglas Depo., pp. 136). Likewise, former WVDHS Secretary Jeff Sandy testified regarding that understaffing has been an issue for decades. (Deposition of Jeff Sandy taken on July 25, 2023 (“Sandy Depo”), pp. 38).

Pervasive Understaffing, Overcrowding, and Overdue Maintenance; Availability of Funding; and, Long-Standing History of Delays

Understaffing

33. On August 11, 2022, Governor Justice issued Executive Order 5-22 finding that: “A state of Emergency exists in West Virginia as it pertains to the staffing levels of our juvenile and adult detention and correctional facilities.” The Order is attached hereto as Exhibit 4 and fully incorporated herein.

34. Governor Justice recognized that “any shortage of correctional officers limits the ability to properly supervise the State’s incarcerated individuals” and lack of proper supervision may present a danger to the incarcerated individuals and others. (Exhibit 4.)

35. Three hundred National Guard members were inserted into in the jails and prisons to help with the severe understaffing in the late summer of 2022.¹

36. Based upon information and belief, in August 2022, the Potomac Highlands Regional Jail in Hampshire County has a vacancy rate for correctional officers (hereinafter “CO”

¹ <https://wvmetronews.com/2023/07/09/excellent-meetings-could-lead-to-proposal-to-address-worker-vacancy-rate-in-states-jails-and-prisons/> (accessed July 10, 2023).

or “CO’s”) of 64% and the Vicki V. Douglas Juvenile Center in Berkeley County has a vacancy rate of 61%.²

37. Based upon information and belief, in March 2023 more than one thousand job vacancies existed in prisons statewide and eight facilities had vacancy rates exceeding 40%.

38. Based upon information and belief, in July 2023, only 74 Correctional Officers were employed at Mount Olive State Prison, a prison that typically employs more than 200.³ The staffing level was less than several months previously when the vacancy rate was approximately 50 percent.⁴

39. Senator Ryan Weld from Brooke County, West Virginia stated that “it’s vital that something be done [regarding the understaffing].”⁵ Senator Weld also noted that “[i]t’s an area of the state in which we haven’t paid our due diligence to.”⁶

40. A state of emergency caused by understaffing for the correctional system previously was issued on December 29, 2017.⁷

41. A Legislative Oversight Committee report from October 2017 showed the state’s ten regional jails all had more inmates than they were designed to hold and have more than three hundred staffing vacancies combined. The West Virginia National Guard was used to help staff the facilities.⁸

² <https://governor.wv.gov/News/press-releases/2022/Pages/Following-legislative-inaction-on-locality-pay-for-correctional-officers-Governor-Justice-declares-State-of-Emergency.aspx> (accessed July 10, 2023).

³ <https://www.wvva.com/2023/07/05/correctional-officers-mount-olive-crisis-point/> (accessed, July 10, 2023).

⁴ *Id.*

⁵ <https://wvmetronews.com/2023/07/09/excellent-meetings-could-lead-to-proposal-to-address-worker-vacancy-rate-in-states-jails-and-prisons/> (accessed July 10, 2023).

⁶ *Id.*

⁷ <https://www.wtap.com/content/news/WV-Governors-order-allows-use-of-National-Guard-to-staff-regional-jails.html> (accessed July 17, 2023).

⁸ *Id.*

42. Based upon information and belief, the Executive Order stated that excessive amounts of overtime are not conducive to safe working practices and environments.⁹

43. Based upon information and belief, West Virginia lags behind competitively in terms of correctional officer pay (Exhibit 1, Douglas Depo., p. 53.)

44. Correctional officers in West Virginia earn approximately Thirty-Two Thousand Dollars per year, while those in the surrounding states of Maryland and Virginia earn Forty or Forty-Four Thousand Dollars per year. (Exhibit 1, Douglas Depo., p. 51.)

45. This pay rate remained the same since July 2018 when a \$6,000 pay increase was enacted in addition to \$2,000 from the 5 percent pay raise bill passed earlier for all state employees. The bill brings the starting salary of corrections officers from \$24,000 to \$32,000 over three years.¹⁰

46. At that time, Governor Justice recognized correctional officers are grossly underpaid and Jeff Sandy, Defendant Sorsaia's predecessor, stated that "For every one correctional officer we hired, two individuals were quitting."¹¹

47. The current circumstances of overtime, utilizing the National Guard, and, having non-security personnel working at some of the security posts inside the jails is not sustainable (Exhibit 1, Douglas Depo., pp. 49-50.)

48. Between August 2022 and June 2023, approximately Seventeen to Nineteen Million Dollars was spent on salaries for the National Guard. (Exhibit 1, Douglas Depo., p. 71.)

49. Based upon information and belief, the low pay and high workload cause a high turnover rate in correctional officers. (Exhibit 1, Douglas Depo., p. 51.)

⁹ *Id.*

¹⁰ <https://www.corrections1.com/corrections-jobs-careers/articles/wva-governor-signs-co-pay-raise-bill-oc17IVmUs97IVeRN/> (accessed July 17, 2023.)

¹¹ *Id.*

50. Based upon information and belief, from July 2019 through July 2022, understaffing in West Virginia's facilities worsened. (Exhibit 2, Jividen Depo., p. 55.)

51. The correctional officer shortage in the regional jails affects the security of the jails as the facilities depend on staff and security staff to operate them safely. (Exhibit 1, Douglas Depo., pp. 55-56.)

52. Shortage of staff or overworked staff would have an impact on the safety of the facility. (Exhibit 1, Douglas Depo., p. 56.)

53. Based upon information and belief, the 2023 correctional officer shortage is the worst in the past thirty years. (Exhibit 1, Douglas Depo., p. 83.)

54. Despite the ongoing recognition of a severe understaffing problem within West Virginia's prison, jail, and juvenile center facilities, five years later, the executive and legislative branches refuse to come to an agreement regarding any method to address the problem; financial incentives are needed to alleviate the unconstitutional conditions that arise out of the deliberate indifference to plaintiffs' health and safety as a result of the conditions of confinement in that facility.¹²

Overcrowding

55. Based upon the West Virginia Division of Corrections and Rehabilitation Fiscal Year Annual Reports for 2019, 2020, 2021, and 2022, statistics and charts show an increase in population among all correctional facilities in comparison to prior years.

56. Based upon information and belief, between 2000 and 2009 West Virginia's prison population more than doubled, the highest growth rate of any state in the nation. (Exhibit 1, Douglas Depo., p. 15.)

¹² *Id.*

57. Based upon information and belief, the State of West Virginia was aware of the rapidly increasing population of prison inmates, some of whom were housed in regional jails awaiting space in prison, as early as 2011. (Exhibit 1, Douglas Depo., pp. 20 and 21.)

58. Based upon information and belief, from January 2018 through July 2022, overcrowding in West Virginia's facilities worsened. (Exhibit 2, Jividen Depo., pp. 54-55.)

59. Overcrowding makes a facility less safe, secure, and humane than it could be. (Exhibit 1, Douglas Depo., pp. 136-137.)

60. West Virginia facilities have always been overcrowded. (Exhibit 2, Jividen Depo., p. 47.)

61. Overcrowding results in having two to three inmates in a cell and inmates sleeping in the day room of the facility. (Exhibit 1, Douglas Depo., p. 141.)

62. Overcrowding in facilities makes the maintenance situation worse. (Exhibit 2, Jividen Depo., p. 87.)

Deferred Maintenance

63. Based upon information and belief, as of April 2022, West Virginia's correctional facilities were in serious need of maintenance that is only getting worse and the WVDOCR talked to the Legislature, the Department of Homeland Security, the Governor's office, and everybody they could talk to over the last few years about the deferred maintenance list. (Exhibit 1, Douglas Depo., pp. 25, 31, and 33.)

64. The deferred maintenance list is a list of every project and maintenance needed in every prison, jail, and juvenile facility that does not have allocated funding. Deferred maintenance is maintenance that needs to be done and is not getting done due mostly to the lack of funding. (Exhibit 1, Douglas Depo., pp. 33 and 38.)

65. Based upon information and belief, from January 2018 through July 2022, the deferred maintenance went from approximately Two Hundred Million to Two Hundred Seventy-Seven Million. (Exhibit 2, Jividen Depo., p. 60; Exhibit 3, Sandy Depo, p. 91).

66. Based upon information and belief, every year a certain amount of money is allotted for maintenance but “it doesn't touch what the overarching bill is.” (Exhibit 2, Jividen Depo., p. 58.)

67. Every year Two Million Dollars for deferred maintenance is allocated for the prisons; Two Hundred and Fifty Thousand Dollars is allocated for juvenile centers; and no specific allocation is made for the jails because they are subject to a special revenue system. (Exhibit 1, Douglas Depo., p. 34.)

68. Occasionally, specific allocations for specific projects occasionally are made. (Exhibit 1, Douglas Depo., p. 34.)

69. The jails are funded through several funding streams. The largest funding stream is the operational fund that comes in from the per diem from the counties. Other funding streams include revenue from things like commissary, inmate telephones and other such sources. (Exhibit 1, Douglas Depo., p. 34.)

70. Additional funding for maintenance of the jails in the approximate amount of Seventeen Million Dollars became available in 2022 from bond reserve fund that became available since the bonds were paid off. (Exhibit 1, Douglas Depo., pp. 34-35.)

71. As of April 2022, the cost of the deferred maintenance for all of West Virginia correctional facilities was more than Two Hundred Seventy-Seven Million Dollars. (Exhibit 1, Douglas Depo., p. 36.)

72. The cost of the deferred maintenance that was believed to be the most critical in 2022 was approximately Sixty Million Dollars. (Exhibit 1, Douglas Depo., pp. 40 and 43.)

73. Twenty-Seven Million of the Sixty Million Dollars is needed for door locking control systems and doors and locks in the jails only and some of the prisons and juvenile centers also need these items. (Exhibit 1, Douglas Depo., pp. 44-46.)

74. A state of disrepair of doors, locks, and door locking control systems can present a risk of harm to inmates as inmates need to be prevented from being able to access other inmates during lockdowns or at night when an inmate is sleeping. (Exhibit 1, Douglas Depo., p. 46.)

75. The list of the most critical deferred maintenance was provided to the chain of command, including Defendant Sorsaia's predecessor Jeff Sandy, and the legislature, specifically the Oversight Committee. (Exhibit 1, Douglas Depo., pp. 42-43.) Further, Sandy testified that every year during his tenure he appeared before the House and Senate Finance and reported what was needed for deferred maintenance. He also testified that every legislative session, he had meetings with the budget office and provided them with reports on all their needs to which Defendant Justice would submit a budget for. (Exhibit 3, Sandy Depo, pp. 28, 30-31).

76. Based upon information and belief, sufficient money is not being allocated to keep up with the deferred maintenance in the facilities. (Exhibit 1, Douglas Depo., p. 38.)

Availability of Funding

77. According to West Virginia's recently retired Secretary of WVDHS and WVDCR Chief of Staff, meetings with legislators, representatives from the Governor's office, of the Legislature, and State budget office officials have occurred wherein these individuals were informed that using part of the money from the budget surplus would greatly improve a lot of the

issues with West Virginia's jails. (Exhibit 1, Douglas Depo., p. 77; Exhibit 3, Sandy Depo., p. 30-31.)

78. Likewise, these government officials would be presented with written proposals with options as to how to correct the overcrowding, understaffing, and deferred maintenance problems within the facilities. (Exhibit 2, Jividen Depo., p. 167; Exhibit 3, Sandy Depo., p. 103-105).

79. Incredibly, the overcrowding, understaffing, and deferred maintenance issues with the correctional facilities have been developing for over a decade. (Exhibit 2, Jividen Depo., pp. 169-171; Exhibit 3, Sandy Depo., p. 28-29).

80. Based upon information and belief, the WVDOCR needs the proper money and funding to be able to operate jails safely. (Exhibit 1, Douglas Depo., p. 49.)

81. ***WVDOCR Chief of Staff testified, if West Virginia spent Sixty Million on correctional officers and Two Hundred Fifty Million on maintenance, a total of Three Hundred Ten Million, a lot of the issues facing West Virginia's jails would be greatly improved.*** (Exhibit 1, Douglas Depo., pp. 69-70.)

82. ***Former WVDOCR Commissioner Jividen testified, "approximately Three Hundred and Twenty Million Dollars would go a long way to correct the overcrowding, understaffing, and deferred maintenance."*** (Exhibit 2, Jividen Depo., pp. 175-176.)

83. The State of West Virginia is not lacking in funds to address the unconstitutional conditions at the facilities.

84. West Virginia ended the 2023 fiscal year with a \$1.8 billion dollar surplus according to Governor Justice, "shattering the all-time record for biggest single-year revenue surplus in state history for the second straight year in a row." (June 30, 2023, Press Release from

the Office of the Governor, which is attached hereto as Exhibit 5 and fully incorporated herein and Exhibit 1, Douglas Depo., p. 76.)

85. Approximately \$454 million of the surplus remains unappropriated after appropriating \$1,165,478,000 of the surplus, none of which was designated to correct the unconstitutional conditions at the state's correctional facilities. (Exhibit 5.)

86. Upon information and belief, Defendant Justice is only planning on spending \$100 million on deferred maintenance, leaving over \$100 million in deferred maintenance unaddressed. (Exhibit 3, Sandy depo., pp. 103, 105.)

87. Defendant Justice and others in state government, the executive or legislative branches, appear to be deliberately indifferent to the deplorable conditions in West Virginia's correctional facilities. In fact, Defendant Justice plans "to work with the Legislature to take what's left unappropriated and continue to make wise investments in what we know will bring us more goodness, like infrastructure, federal matches, and tourism, because the more we tell the world about West Virginia, the more people will want to live, work, and raise their families here." (Exhibit 5.) Defendant Justice and our legislature have yet to mention to the public a detailed plan for tackling \$277 million on deferred maintenance.

Long-Standing History of Delays

88. Based upon information and belief, as far back as 1946, the West Virginia Supreme Court found the county's jails to be anachronisms and totally unfit for human habitation and a recommendation was made that the county jails be consolidated into regional jails and adequate numbers of appropriately trained staff be utilized. (Exhibit 2, Jividen Depo., pp. 179-180.)

89. The West Virginia Regional Jail and Prison Authority was established by legislative action in 1985, taking thirty-nine years for the State of West Virginia to come up with a regional jail system. (Exhibit 2, Jividen Depo., p. 180.)

90. An additional twenty years passed before all of the regional jails were opened. (Exhibit 2, Jividen Depo., p. 180.)¹³

91. Therefore, a total of fifty-nine years passed before the State of West Virginia opened regional jails only for them in two decades to turn into, humanly uninhabitable regional jails instead of county jails. See also, Exhibit 2, Jividen Depo. PP 180-181.

92. In 1983, the Honorable Arthur M. Recht issued a seventy-five page Memorandum of Opinion, Findings of Fact, Conclusions of Law, and Order regarding the West Virginia Penitentiary at Moundsville (WVP) in which it detailed the numerous deficiencies that when considered in their totality rendered the conditions of confinement at WVP unconstitutional. *Crain v. Bordenkircher*, 176 W. Va. 338, 341, 342 S.E.2d 422 (1986). This case is attached hereto as Exhibit 6 and fully incorporated herein.

93. In February 1995, twelve years later, the new State penitentiary, the Mount Olive Correctional Complex was completed and the prisoners were beginning to be transferred from Moundsville. See, *Crain v. Bordenkircher*, 193 W.Va. 362, 362, 456 S.E.2d 206 (1995).

94. Based upon information and belief and given the history in the past century, the State of West Virginia would permit unconstitutional conditions at its correctional facilities to continue for extended periods of time, unless specific deadlines are imposed by this Court issuing an order.

B. Class A-Current Prison Inmates

¹³ This information was gleaned from a 2010 Correctional Officer training module.

95. Class A includes all currently incarcerated individuals who are inmates housed at MOCC and other prison facilities in West Virginia.

96. Class A is so numerous that joinder of all members is impracticable.

97. Members of Class A are fluid, as new individual members are incarcerated at MOCC and other prison facilities, and many members are subsequently transferred to another jail or prison facility.

98. There are questions of law or fact common to the class.

99. Class A common questions of fact include whether inmates at MOCC and other prison facilities are or have been exposed to the horrific conditions described hereinabove and whether the deplorable conditions of the facility violate the minimal standards of decency required to pass Constitutional muster.

100. Common questions of law applicable to Class A include whether Defendants acted with deliberate indifference to the health and safety of inmates by knowingly exposing them to the conditions of confinement described hereinabove.

101. The claims of the named Plaintiff are typical of the claims of the class as a whole.

102. Plaintiff has been subjected to the same constitutional violations as the result of the same policies and/or lack of policies, same practices and/or lack of practices, and deprivations as the absent class members.

103. The named Plaintiff will fairly and adequately represent and advance the interests of the class.

104. By filing this action, the named Plaintiff has displayed a strong interest in vindicating the rights of all who have been similarly harmed by Defendants' actions. By seeking

to remedy the violations of their Constitutional rights, the named Plaintiff will also be advancing and proving the claims and rights of absent class members.

105. There are no antagonistic interests between Plaintiff and the absent members of the class, and the relief sought by the named Plaintiffs will benefit the class generally.

106. The named Plaintiff is represented by New, Taylor & Associates, the Lupardus Law Office, the Whitten Law Office, and Robert Dunlap & Associates, law firms with substantial experience in class litigation, representing inmates in civil actions, and in representing low-income West Virginians in civil actions.

107. Counsel for the putative class are knowledgeable about the conditions of confinement in all of West Virginia's correctional facilities, the constitutional rights of inmates, and are skilled in conducting civil rights litigation in federal courts, including the prosecution and management of class action litigation. See, also, *Rose et al. v. Jividen, et al*, 5:22-cv-00405.

108. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final relief with respect to the class as a whole an appropriate remedy.

i. Thomas Sheppheard, Class A Representative

109. Plaintiff Sheppheard was incarcerated at MOCC on or about May 1, 2023.

110. Plaintiff Sheppheard, along with all the other inmates, are subject to overcrowded facilities, resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

111. Plaintiff Sheppheard, along with all other inmates, are subjected to facilities that were not properly staffed, resulting in unsafe conditions for all inmates in the jails resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

112. Plaintiff Sheppheard, along with all other inmates, are subject to correctional facilities that require millions of dollars of maintenance, resulting in facilities that are unsafe, unsanitary, and did not meet the requirements set out by law.

113. Plaintiff Sheppheard has been given inadequate portions of food at MOCC.

114. Plaintiff Sheppheard has only had access to showers with hot water, which resulted in blisters on his back.

115. Plaintiff Sheppheard does not get regular access to new toothbrushes and toothpaste.

116. Plaintiff Sheppheard does not have access to a law library at MOCC.

117. Plaintiff Sheppheard does not have recreational time at MOCC.

C. Class B- Current Jail Inmates

118. Class B includes all currently incarcerated individuals who are inmates housed at Southwestern and other jail facilities.

119. Class B is so numerous that joinder of all members is impracticable.

120. Members of Class B are fluid, as new individual members are incarcerated at Southwestern and other jail facilities daily, and many members are subsequently transferred to another jail or prison facility.

121. There are questions of law or fact common to the class.

122. Class B common questions of fact include whether inmates at Southwestern and other jail facilities are or have been exposed to the horrific conditions described hereinabove and whether the deplorable conditions of the facility violate the minimal standards of decency required to pass Constitutional muster.

123. Common questions of law applicable to Class B include whether Defendants acted with deliberate indifference to the health and safety of inmates by knowingly exposing them to the conditions of confinement described hereinabove.

124. The claims of the named Plaintiff are typical of the claims of the class as a whole.

125. Plaintiff has been subjected to the same constitutional violations as the result of the same policies and/or lack of policies, same practices and/or lack of practices, and deprivations as the absent class members.

126. The named Plaintiff will fairly and adequately represent and advance the interests of the class.

127. By filing this action, the named Plaintiff has displayed a strong interest in vindicating the rights of all who have been similarly harmed by Defendants' actions. By seeking to remedy the violations of their Constitutional rights, the named Plaintiff will also be advancing and proving the claims and rights of absent class members.

128. There are no antagonistic interests between Plaintiff and the absent members of the class, and the relief sought by the named Plaintiffs will benefit the class generally.

129. The named Plaintiff is represented by New, Taylor & Associates, the Lupardus Law Office, the Whitten Law Office, and Robert Dunlap & Associates, law firms with substantial experience in class litigation, representing inmates in civil actions, and in representing low-income West Virginians in civil actions.

130. Counsel for the putative class are knowledgeable about the conditions of confinement in Southwestern and other jail facilities, the constitutional rights of inmates, and are skilled in conducting civil rights litigation in federal courts, including the prosecution and management of class action litigation.

131. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final relief with respect to the class as a whole an appropriate remedy.

ii. Tyler Randall, Class B Representative

132. Plaintiff Randall was incarcerated at Southwestern on or about April 15, 2022, and is currently incarcerated there.

133. Plaintiff Randall, along with all the other inmates, are subject to overcrowded facilities, resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

134. Plaintiff Randall, along with all other inmates, are subjected to facilities that were not properly staffed, resulting in unsafe conditions for all inmates in the jails resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

135. Plaintiff Randall, along with all other inmates, are subject to jail facilities that required millions of dollars of maintenance, resulting in facilities that were unsafe, unsanitary, and did not meet the requirements set out by law.

136. Plaintiff Randall, while incarcerated at Southwestern, has been housed in overcrowded cells.

137. Plaintiff Randall has observed inmates sleeping on the floor while at Southwestern.

138. Plaintiff Randall has been exposed to mold while at Southwestern.

139. Plaintiff Randall has also been exposed to rodent feces while in his pod at Southwestern.

140. Plaintiff Randall has been given inadequate portions of food at Southwestern.

D. Class C-Juvenile Center Inmates

141. Class C includes all currently incarcerated minor individuals who are inmates housed at Kuhn Juvenile Center and other Juvenile Center facilities in West Virginia.

142. Class C is so numerous that joinder of all members is impracticable.

143. Members of Class C are fluid, as new individual members are incarcerated at Kuhn and other Juvenile Center facilities daily, and many members are subsequently transferred to another juvenile center.

144. There are questions of law or fact common to the class.

145. Class C common questions of fact include whether inmates at Kuhn and other Juvenile Center facilities are or have been exposed to the horrific conditions described hereinabove and whether the deplorable conditions of the facility violate the minimal standards of decency required to pass Constitutional muster.

146. Common questions of law applicable to Class C include whether Defendants acted with deliberate indifference to the health and safety of inmates by knowingly exposing them to the conditions of confinement described hereinabove.

147. The claims of the named Plaintiff are typical of the claims of the class as a whole.

148. Plaintiff has been subjected to the same constitutional violations as the result of the same policies and/or lack of policies, same practices and/or lack of practices, and deprivations as the absent class members.

149. The named Plaintiff will fairly and adequately represent and advance the interests of the class.

150. By filing this action, the named Plaintiff has displayed a strong interest in vindicating the rights of all who have been similarly harmed by Defendants' actions. By seeking

to remedy the violations of their Constitutional rights, the named Plaintiff will also be advancing and proving the claims and rights of absent class members.

151. There are no antagonistic interests between Plaintiff and the absent members of the class, and the relief sought by the named Plaintiffs will benefit the class generally.

152. The named Plaintiff is represented by New, Taylor & Associates, the Lupardus Law Office, the Whitten Law Office, and Robert Dunlap & Associates, law firms with substantial experience in class litigation, representing inmates in civil actions, and in representing low-income West Virginians in civil actions.

153. Counsel for the putative class knowledgeable about the conditions of confinement in Kuhn and other Juvenile Center facilities, the constitutional rights of inmates, and are skilled in conducting civil rights litigation in federal courts, including the prosecution and management of class action litigation.

154. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final relief with respect to the class as a whole an appropriate remedy.

iii. J.R., Minor-Class C Representative

155. Plaintiff J.R., Minor was incarcerated at Kuhn Juvenile Center on or about May 31, 2023, and is currently housed there.

156. Plaintiff J.R., along with all the other inmates, are subject to overcrowded facilities, resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

157. Plaintiff J.R., along with all other inmates, are subjected to facilities that were not properly staffed, resulting in unsafe conditions for all inmates in the jails resulting in conditions that were unsafe, unsanitary, and did not meet the requirements set out by law.

158. Plaintiff J.R., along with all other inmates, are subject to jail facilities that required millions of dollars of maintenance, resulting in facilities that were unsafe, unsanitary, and did not meet the requirements set out by law.

159. Plaintiff J.R. has been served undercooked food while at Kuhn.

160. Plaintiff J.R. has not always had access to hot water since being incarcerated at Kuhn.

IV. CAUSE OF ACTION

EIGHTH AMENDMENT VIOLATIONS UNDER 42 U.S.C. § 1983 (Conditions of Confinement)

161. Plaintiffs hereby incorporate by reference all preceding paragraphs as though fully set forth herein.

162. Defendants, while acting under color of law and within the scope of their employment, violated the Eighth Amendment right of convicted inmates to be free from cruel and unusual punishment.

163. The actions of Defendants, described hereinabove, violated the constitutional rights guaranteed to Plaintiffs, and all similarly situated inmates and former inmates, under the Eighth Amendment to the United States Constitution by depriving them of basic human necessities.

164. Defendants imposed and/or permitted these conditions despite said conditions not being reasonably related to any legitimate non-punitive governmental or penological objective.

165. Defendants were deliberately indifferent to the health, safety, and other basic needs of Plaintiffs (and all similarly situated inmates), as described hereinabove, by having actual knowledge of such conditions and deliberately taking no action to remedy them in a timely or appropriate manner.

166. The actions of Defendants, described hereinabove, were not taken in good-faith, were objectively unreasonable, and were in violation of clearly established law.

167. During the time period at issue, it was clearly established that the serious deprivations of basic human needs at MOCC, Southwestern, and Kuhn and all other West Virginia correctional facilities, as described hereinabove, violated the Eighth Amendment to the United States Constitution.

168. The actions of Defendants, described hereinabove, deliberately injured Plaintiffs in a way unjustified by any governmental interest.

169. The actions of Defendants, described hereinabove, shock the conscious.

170. The actions of Defendants, described hereinabove, were unlawful and unjustified.

171. As a direct and proximate result of Defendants' unlawful, unjustified, and unconstitutional actions, Plaintiffs (and all similarly situated inmates) are suffering a deprivation of their Constitutional rights

172. Plaintiffs will also seek to recover, under 42 U.S.C. § 1988, attorneys' fees and cost incurred during the course of this litigation.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated current inmates at all of the states jails, correctional facilities, and juvenile centers request that the Court, and pursuant to 18 U.S.C. § 3626 request:

- a) Certify a class pursuant to Federal Rule of Civil Procedure 23 of a class of all individuals currently incarcerated at any correctional facility within the state of West Virginia;

- b) Declare under Fed. R. Civ. P. 57 that Defendants' actions and/or inactions, as described hereinabove, violate the Eighth and Fourteenth Amendments to the United States Constitution;
- c) Enjoin, under Fed. R. Civ. P. 65, Defendants from engaging in further unconstitutional practices, as described hereinabove, and compel them to implement and enforce policies, procedures, and practices necessary to ensure the minimal civilized measure of life's necessities and/or the Constitutional thresholds of confinement are provided to all inmates housed in the states jails, correctional facilities, and juvenile centers;
- d) Enjoin, under Fed. R. Civ. P. 65, Defendants from engaging in further unconstitutional practices, as described hereinabove, and compel them to make all necessary structural and/or infrastructure repairs, hazard abatements, financial investments, and personnel changes/additions to ensure these constitutional deprivations cease and do not continue in the future;
- e) Enjoin and compel, under Fed. R. Civ. P. 65, Defendants to spend state budget surplus funds (or submit bills, call for a special session, etc.) in order to make all of the necessary deferred maintenance repairs required at all West Virginia correctional facilities in an amount not less than 270 million dollars;
- f) Enjoin and compel, under Fed. R. Civ. P. 65, Defendants to spend state budget surplus funds to hire and pay the requisite number of correctional staff needed to appropriately staff the facilities, not less than 60 million dollars;
- g) Enjoin, under 18 U.S.C. § 3626, Defendants from engaging in further unconstitutional practices, as described hereinabove, by the least intrusive means to correcting that harm with respect to all inmates housed in a West Virginia prison;

- h) Impose definite time limitations within which the Defendants and the State of West Virginia must comply with the injunction;
- i) Award attorney's fees and costs incurred during the course of this litigation, pursuant to 42 U.S.C. § 1988;
- j) Grant any and all relief Plaintiffs or class members may be entitled to in law or equity; and ,
- k) Grant any further relief this Honorable Court deems just and proper.

**Thomas Sheppheard, Tyler Randall, and
Adam Perry, next friend and guardian of
Minor child J.P on their own behalf and
on behalf of all those similarly situated,**

By Counsel

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1 Q. Do you recognize that?

2 A. I do.

3 Q. What is Exhibit 1?

4 A. This is an article that was in the
5 West Virginia Encyclopedia published at some point.

6 Q. And you wrote that article, correct?

7 A. I wrote some of this. I did not write
8 this whole article. This has been updated.

9 Q. All right. Can you tell me the portions
10 of that article that you did not write?

11 A. I don't believe I wrote that last
12 paragraph. That's been updated.

13 Q. Does that begin --

14 A. The State has continued to struggle.

15 Q. So the one, two, three, four -- five
16 paragraphs prior to that, did you write that?

17 A. Yes, sir.

18 Well, that last paragraph that -- well,
19 one, two, three, four -- fifth paragraph, I'm not
20 sure that I wrote that whole thing. It states
21 dates in 2020.

22 Q. Who else would have access to the
23 West Virginia Encyclopedia?

24 Is it kind of like a Wikipedia thing that

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1 A. Director of Research and Planning.

2 Q. And I think that's how you are identified,
3 correct?

4 A. Yes.

5 Q. Director of Research and Planning for the
6 State Division of Corrections, right?

7 A. That's correct.

8 Q. And the recidivism rate was 26.8 percent
9 in 2004, fourth lowest amongst states, right?

10 A. Yes.

11 Q. And you say, I think that is a very
12 positive light.

13 So it was seven years prior the recidivism
14 rate and that was a positive as of May 2011,
15 correct?

16 A. Correct.

17 Q. Let's go down to the bottom part of the
18 article. That doesn't mean there are no problems
19 in the State system. Douglas said that
20 West Virginia has the nation's second fastest
21 growing prison population, increasing by 4 percent
22 annually. Only Alaska is seeing a more rapid
23 climb.

24 Did I read that correctly?

1 A. You did.

2 Q. Was that correct?

3 A. I believe that's accurate.

4 Q. So the State of West Virginia knew as
5 early as 2011 that it had the second fastest
6 climbing rising inmate population, correct?

7 A. Prison population.

8 Q. Prison population.

9 And are you making a distinction there
10 between prison and other facilities?

11 A. Yes, this was about prisons.

12 Q. And in 2011 what prisons were there?

13 A. I'm not sure I can name them all
14 accurately with a specific date like that.

15 Q. How many were there?

16 A. I'm not even sure.

17 Q. Are you making a distinction between
18 prisons versus regional jails?

19 A. Correct.

20 Q. And in 2011 DOC ran prisons and maybe even
21 other facilities and Regional Jails ran regional
22 jails, correct?

23 A. Correct.

24 Q. Were the regional jails also trending

1 worse than it was in 2011, correct?

2 A. Correct.

3 (Exhibit No. 3 marked for
4 identification.)

5 THE WITNESS: Okay.

6 BY MR. NEW:

7 Q. All right. This is a news article from
8 WCHS Tuesday, April 26, 2022. Do you recall
9 testifying to the Oversight Committee on Regional
10 Jail and Correctional Center Authority on Tuesday,
11 April 26, 2022?

12 A. I don't recall that one specifically, but
13 I did so pretty often.

14 Q. And it says here that Senator Charles
15 Clements of Wetzel and Senator Jack Woodrum of
16 Summers were the two members present for your
17 presentation on that day, correct?

18 A. Yes.

19 Q. When you testify to a Committee at the
20 Legislature, do you do so under oath?

21 A. I do.

22 Let me take that back. I'm not so sure --
23 I'm not sure that they always swear you in at the
24 Oversight Committee if there is not a quorum.

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1 Moundsville that serves Brooke, Hancock, Marshall,
2 Ohio and Wetzel counties was experiencing 50
3 percent officer shortage while the Western Regional
4 that serves Cabell, Lincoln, Mason, Putnam and
5 Wayne was experiencing 46 percent shortage of
6 correctional officers. It's still a real struggle
7 to hire people right now, he said, despite efforts
8 to advertise for the position and get the word out
9 about jobs. That is a major topic on our mind.
10 Starting hourly wage is \$14.75. That was as of
11 April 2022, correct?

12 A. Yes.

13 Q. And you note, It's a tough job. Takes a
14 special person and you're paying what they're
15 paying down the road at the gas station.

16 Was there a bill in 2022 to raise
17 correctional officer pay?

18 A. I don't remember specifically, there
19 probably was.

20 Q. There was a bill in 2023 specifically
21 because the Governor mentioned it in the State of
22 the State specifically a bill to raise correctional
23 officer pay and some locality type pay or something
24 for the officers in the Eastern panhandle to

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1 Q. Anyone else?

2 A. Not that I know of.

3 Q. So the two of you for the past few years
4 have been talking to the Legislature and it says,
5 Everybody we can talk to. People within the
6 Governor's office?

7 A. Our chain of command, yes.

8 Q. Who is your chain on command?

9 A. The Department of Homeland Security and
10 the Governor's office.

11 Q. So that would be Commissioner Sandy here,
12 correct?

13 A. Secretary Sandy.

14 Q. Secretary. My apologizes.

15 Secretary Sandy here, correct?

16 A. Correct.

17 Q. And who else within the Governor's office
18 were you talking to about the facilities were in
19 serious need of maintenance that's only getting
20 worse?

21 A. I don't know specifically who all those
22 people would be.

23 Q. Above him, Secretary Sandy, where does it
24 go from there?

1 A. Well, there is Chief Abraham but there are
2 others but I'm not sure specifically at that point
3 in time who all those people were.

4 Q. Brian Abraham, that's the Governor's Chief
5 of Staff, correct?

6 A. Correct.

7 Q. Did you or Ms. Jividen ever speak to the
8 Governor himself about the deferred maintenance?

9 A. I don't know about Ms. Jividen, I did not.

10 Q. So let's talk about deferred maintenance
11 at West Virginia jails. You outlined here, The
12 list is of every project and maintenance needed in
13 every prison, jail and juvenile facility that does
14 not have allocated funding.

15 Tell me what you mean by that does not
16 have allocated funding?

17 A. So we get specific allocations of funds
18 for specific projects sometimes. And we also get a
19 flat amount for deferred maintenance every year
20 that we allocate or encumber for specific projects.
21 So there is a list of projects that have funds
22 allocated to them and are in various stages of
23 completion. That deferred maintenance list I was
24 referring to here are maintenance projects that do

1 not have allocated funding.

2 Q. And how much does the State allocate for
3 deferred maintenance year in and year out?

4 A. Every year we get \$2 million for deferred
5 maintenance for our general revenue facilities
6 which is the prisons. We get 250,000 for our
7 general revenue facilities, juvenile centers. And
8 we do not get a specific allocation for the jails
9 because that's a special revenue system.

10 Q. All right.

11 A. We also get specific allocations for
12 specific projects occasionally.

13 Q. Where would the money come from? You said
14 it's a special revenue project, where would the
15 money have to come from to do the deferred
16 maintenance in the regional jails?

17 A. So the jails are funded through several
18 funding streams. The biggest one being the
19 operational fund that comes in from the per diem
20 from the counties. But there are also funding
21 streams from things like commissary, inmate
22 telephones, et cetera. So it has to come from one
23 of those sources.

24 Q. I understand that.

1 So has there been a specific indication
2 like you've got 2 million in the budget for
3 prisons, 250 for juvenile facilities, has there
4 been any indication, hey look, we're going to tag X
5 number of dollars a year out of the jails funds to
6 catch up on deferred maintenance?

7 A. Yeah. We have an opportunity now through
8 the money that was previously a part of the bond
9 reserve since the bonds are paid off to use that
10 money for maintenance now.

11 Q. Opportunity, when did that opportunity
12 arise?

13 A. I don't believe it was this session, it
14 was the session before that.

15 Q. And was there any money allocated out of
16 that bond revenue money that's freed up to do the
17 deferred maintenance at jails?

18 A. We're in that process correctly.

19 Q. In process currently.

20 Where in the process are you?

21 A. I don't know specifically.

22 Q. How much is looking at being allocated to
23 catch up on the deferred maintenance in
24 West Virginia's jails?

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1 that's currently in the special fund, bond revenue
2 that you just told me about and get it down to 260
3 million and the State allocates in the budget
4 2,250,000 a year for deferred maintenance, correct?

5 A. Correct.

6 Q. How many years would it take to catch up
7 on the \$260 million?

8 A. I don't know.

9 Q. All right. Let's round it back to
10 2 million. Two into 260 that's a hundred -- it
11 would take 130 years to catch up on the State's
12 deferred maintenance at the rate that the State
13 currently allocates money for it. Is that a fair
14 statement?

15 A. I don't believe that's a fair statement.
16 We have other --

17 Q. What's unfair about it?

18 A. Well, we have other ways of dealing with
19 some of that deferred maintenance. We do a lot of
20 work ourself without bidding it out to outside
21 stuff. So that number is a moving number all the
22 time.

23 Q. Yeah. According to this article it moved
24 from 150 to 277. Over what period of time did it

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1 A. Were the projects completed?

2 Q. Yes.

3 A. No.

4 Q. So as we used to say in the army, hope is
5 not a planning tool, it is?

6 A. No.

7 Q. It says, you hoped to have -- the hoped to
8 have completed, did you hope to have the list
9 completed by the end of May or did you hope to have
10 the projects completed by the --

11 A. That was -- I was referring to having the
12 presentation done by then.

13 Q. Having the list done by the end of May.

14 And you're saying here, Our intentions to
15 analyze the top 10, 15 or 20 biggest critical
16 needs. And at some point did the State get that
17 list of the top 10, 15, 20 biggest critical needs
18 put together?

19 A. Yes.

20 Q. What was done with that list?

21 A. It was provided to the chain of command
22 and the legislature.

23 Q. And by chain of command, you mean
24 Secretary Sandy here, correct?

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1 A. Correct.

2 Q. At DHS. Legislature, any specific
3 committees or did that just go to president of the
4 senate and speaker of the house or were there
5 specific committees that got it?

6 A. I believe it was provided to our Oversight
7 Committee.

8 Q. Oversight. Okay.

9 And was there anybody else besides
10 Secretary Sandy here who got it and the Oversight
11 Committee?

12 A. Not to my knowledge.

13 Q. And what was done with the list for the
14 top 10, 15 or 20 most critical needs, biggest most
15 critical needs?

16 A. We still have it and it serves as our
17 priority list for deferred maintenance projects.

18 Q. How many things have been knocked off of
19 that list in the year, 13 months since that list
20 was compiled?

21 A. I'm not sure.

22 Q. What was the money needed to knock those
23 things off the list?

24 A. That was about 60 million.

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1 Q. 60 million. And how much money were you
2 given?

3 A. The amount that we talked about earlier.

4 Q. 17?

5 A. Well, that and then the 2 million we get
6 every year, so.

7 Q. 17, 2 million, 250 -- so 19,250,000 when
8 you asked for 60 million, correct?

9 A. Correct.

10 Q. And we're not talking about -- I mean
11 obviously that's 60 of 227 million that needs spent
12 on all of the deferred maintenance, right?

13 A. That 60 million is a subset of that other
14 number, yes.

15 Q. Right.

16 And you've identified that as being 60
17 million the most critical, correct?

18 A. Correct.

19 Q. And is 27 of that 60 million locks --

20 A. Doors, locks -- well, let me say it
21 differently. Door locking controlling systems
22 which is not the same things, selective locks and
23 doors for the jails.

24 Q. I understand that.

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1 MR. NEW: Let' take a quick break. We'll
2 get through the rest of this.

3 THE COURT: This concludes part one. The
4 time is 10:51 a.m.

5 (Break in proceedings.)

6 VIDEOGRAPHER: This is the beginning of
7 part two. The time is 11:04 a.m.

8 BY MR. NEW:

9 Q. Okay, we were talking about this critical
10 issues list on the deferred maintenance. You asked
11 for sixty million, you got 19,250,000. And I
12 understood you to say that 27 million is needed for
13 door locking control systems and doors and locks,
14 correct?

15 A. Correct.

16 Q. So it is fair to say that the 19,250,000
17 wasn't all spent on just door locking control
18 systems and doors and locks?

19 A. Correct.

20 Q. Do you know how much is needed -- I'm
21 sorry, how much was spent towards the 27 million
22 for the door locking and control systems and doors
23 and locks?

24 A. How much was spent so far?

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1 Q. Yes.

2 A. I don't -- of the 17 million in the jail
3 fund, none so far.

4 Q. Are there door locking control systems and
5 doors and locks deferred maintenance needs totaling
6 this 27 million dollars at every correctional
7 facility in the State of West Virginia?

8 A. That 27 million represents the jails.

9 Q. Jails. So that would not include the
10 needs for door locking control systems, doors and
11 locks at prisons and juvenile facilities, correct?

12 A. Correct.

13 Q. Let's break each of the three of those
14 down then. For the jails, is every jail to some
15 extent in need of doors, locks, door locking
16 control systems?

17 A. Yes.

18 Q. How many jails are there?

19 A. Ten.

20 Q. Same question with respect to prisons and
21 juvenile facilities. To some extent, and I'm not
22 asking about the amount, is there a need for doors,
23 locks and door locking control systems at all of
24 West Virginia's prisons and juvenile facilities?

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1 MR. MURRAY: Objection. Go ahead.

2 THE WITNESS: If they're not sentenced to
3 State prison, yes.

4 BY MR. NEW:

5 Q. Right.

6 If an inmate hasn't been sentenced to
7 State prison yet, the obligation to feed, house,
8 clothe that inmate is the responsibility of the
9 county from which that inmate comes, correct?

10 MR. MURRAY: Objection.

11 BY MR. NEW:

12 Q. Is that your understanding?

13 A. Through their per diem payments to the
14 regional jails.

15 Q. But that --

16 A. I'm not sure where that line is drawn.

17 Q. The counties have contracted with the
18 State to house those inmates in these regional
19 jails, correct?

20 MR. MURRAY: Objection.

21 THE WITNESS: I don't know that.

22 BY MR. NEW:

23 Q. Have you ever seen a contract between the
24 State of West Virginia and the counties or a

1 Memorandum of Understanding or something?

2 A. No.

3 Q. The next paragraph down you say, There is
4 not much else we know to do. We think we have
5 tapped out those savings. We do not have an
6 opinion or a desire or how we solve the problem.
7 We just know as the DCR that we need the proper
8 money and funding to be able to operate the jail
9 safely. Did I read that correctly?

10 A. You did.

11 Q. Is that the same on June the 12th of 2023
12 as it was when you were testifying before the
13 Interim Committee on Tuesday, April 26, 2022?

14 A. Yes.

15 Q. Senator Clements then asks you, When I
16 look at those numbers and you're down 61, 62
17 percent, how do you operate with those numbers.
18 And then you go on to describe the exhaustion of
19 the correctional officers that still work for the
20 State of West Virginia, correct?

21 A. Correct.

22 Q. And you mentioned earlier that, for
23 instance, in the Eastern panhandle that has as high
24 as 50, 60, I think I've seen you quoted or maybe

1 heard you on Hoppy or something recently that as
2 high as 70 percent vacancy of correctional officers
3 in the Eastern panhandle, correct?

4 A. Correct.

5 Q. And you mention in your earlier part of
6 your testimony getting officers to come from other
7 areas of the state to come over to the Eastern
8 panhandle and chip in, do overtime, correct?

9 A. Correct.

10 Q. You've now got National Guardsmen and
11 non-security personnel working at some of the
12 security posts inside the jails, correct?

13 A. Correct.

14 Q. That's not sustainable, is it,
15 Mr. Douglas?

16 A. It is not.

17 Q. Is there and has there been since 2019 a
18 high turnover rate of the State's correctional
19 officers in the regional jails?

20 A. Yes.

21 Q. What's the average turnover rate in each
22 jail?

23 A. I don't know. I don't have that number.

24 Q. That number is easy for us to ascertain

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1 A. We have.

2 Q. For how many years have you brought that?

3 A. Several. And much progress has been made
4 but not comparing to the other jurisdictions.

5 Q. And I think that I had read you quoted as
6 saying that the pay raises in 2018 you called them
7 historical. Tell me what you meant by that when
8 you called those pay raises for correctional
9 officers historical?

10 A. Up to that point, the starting salary for
11 correctional officer was around 22,000 I think.
12 Secretary Sandy got them a dollar raise by using
13 some unfunded positions, and then the Governor's
14 \$6000, 2-2-2 raise along with a of couple of across
15 the boards that we also benefit from and a Board
16 proposal to the Division of Personnel bought the
17 starting salary up to, I believe it was 30,000 all
18 tolled right after that and that made a large
19 difference.

20 Q. And I appreciate that. The correctional
21 officers -- is it fair to say that at 10 to \$11 an
22 hour for starting pay that was horribly underpaid
23 at that point, right?

24 A. Correct.

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1 A. Yeah, it would be time and a half.

2 Q. Time and a half.

3 Has there been resistance to a thought of
4 further raising -- I mean obviously there is
5 resistance because the Governor sent a bill to
6 Legislature this year to raise correctional officer
7 pay yet again, correct?

8 A. The Governor sent a bill related to
9 locality pay to the Legislature this year.

10 Q. Where is the resistance coming from in
11 terms of raising correctional officer pay yet again
12 to make West Virginia competitive and address this
13 understaffing at our jails?

14 A. My belief is that there is not resistance.
15 It's just trying to get on the same page with how
16 to do it, but that's my belief.

17 Q. And so we talked about pay and workload.
18 It's unsustainable to ask officers -- for instance,
19 if you're a correctional officer, as an example, at
20 North Central and you do 40 hours at North Central,
21 and then you go out on a weekend or something and
22 do 16 or 20 out in the Eastern panhandle, just
23 using that as an example, that example isn't out of
24 the ordinary for the State of West Virginia; is the

1 not?

2 A. I don't believe that's typically how we do
3 it but just going on your example, I understand.

4 Q. And that example that I gave you of an
5 officer doing 40 at North Central then going out to
6 the Eastern panhandle and doing another 16 or 20
7 over the weekend, that's not sustainable for that
8 correctional officer?

9 A. That would not be sustainable.

10 Q. And that's the type of increased workload
11 that you're talking about, isn't it?

12 A. Correct.

13 Q. And last part of this Senator Clements
14 asked you, Do you feel like you've ever gotten to
15 the point where security has become an issue and
16 you said, Um, I feel that we will inevitability get
17 to that point if we're not there already. Tell me
18 what you meant by that?

19 A. Exactly what I said.

20 Q. What is the about correctional officer
21 shortage in the regional jails that affects the
22 security of those places?

23 A. Those facilities depend on staff and
24 security staff to operate them -- operate them

1 here.

2 The additional 10 would have cost 7 and a
3 half million, right?

4 A. That would just be for the vacancy
5 openings.

6 Q. Right. That would be for the vacancy and
7 that's just the additional 10?

8 A. That sounds right.

9 Q. And if you paid 750 officers 40,000 -- 30
10 million would pay 750 officers starting salary of
11 40,000, right?

12 A. That sounds right.

13 Q. Not to mention the difference -- would you
14 have to escalate up other officer pay as well then?

15 I mean, you couldn't very well have a 10
16 year or 15 year officer making 35, bring in a new
17 guy that makes 40, you'd have to escalate their pay
18 up some, correct?

19 A. Correct. You'd estimate it based on how
20 many total CO positions we have.

21 Q. Which I think I read a moment ago, 3800.
22 What's the cost of getting officer pay to what it
23 needs to be whether for the vacancies or the
24 roughly 2800 that you have now?

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1 A. I don't have that number right in front of
2 me and it's real complex depending on how you go
3 about doing it.

4 Q. I have talked to some legislators that
5 estimate that about 55 million is needed to fix the
6 officer pay situation. Do you have any reason to
7 disagree with that number?

8 A. I would just state that that might have
9 been related to the bill that they had.

10 Q. But with 55 or 60 million dollars, you
11 could give the 2800 officers that you have now a
12 raise in pay, correct?

13 A. You bet.

14 Q. And you could be competitive in hiring the
15 750 or so that you need, correct?

16 A. That would be correct.

17 Q. So let's do some kind of math here that we
18 can understand, easy math. If you -- if the State
19 of West Virginia spent \$60 million on correctional
20 officers and say \$250 million on maintenance, \$310
21 million, wouldn't a lot of the issues facing
22 West Virginia's jails be greatly improved, if not
23 go away?

24 MR. MURRAY: Objection.

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1 THE WITNESS: I would agree they would be
2 greatly improved.

3 BY MR. NEW:

4 Q. I mean the 60 million spent on
5 correctional officers would make your current 2800
6 correctional officers competitive in their pay and
7 reward their dedication. You could more easily
8 recruit the 750 that you're missing, correct?

9 A. Speaking in general numbers because that
10 2800 is total -- that's all our positions, not just
11 officers.

12 Q. I got you.

13 I mean, you could give raises to the
14 maintenance staff and to the clerical staff?

15 A. Correct.

16 Q. And all the other people that have shown
17 their dedication to the State of West Virginia and
18 its correctional system, correct?

19 A. Correct.

20 Q. And the \$250 million in maintenance, that
21 would get you close in catching up on years worth
22 of deferred maintenance, correct?

23 A. Correct.

24 Q. While we are talking dollars, what does it

1 correct? I mean within 2500 bucks.

2 A. Correct.

3 Q. And then if you go down a couple more
4 paragraphs, says, Lawmakers will consider the bill
5 during the 60 day legislative session to provide
6 more funding.

7 And do you see that?

8 A. Yes.

9 Q. Did that bill ever get introduced the one
10 that's referenced in this Inter-Mountain article?

11 A. I don't believe it did.

12 Q. Was there a reason for that?

13 A. I don't know. Not to my knowledge.

14 Q. Has there seemed to be a resistance on the
15 part of State Legislature to take up the bill
16 that's mentioned here, not just the locality one
17 but this one that's talking about an increase in
18 the base salary for correctional officers based on
19 years of service, 600 increase for the first five
20 years, 600 increase every three years thereafter?

21 MR. MURRAY: Objection.

22 THE WITNESS: I don't see it as
23 resistance. I think this is what preceded the bill
24 that initially got -- that eventually got

1 introduced.

2 BY MR. NEW:

3 Q. The Governors's office seems to want
4 correctional officers to get a pay increase,
5 correct?

6 A. Correct.

7 Q. If the Governor wants it and there is
8 money in the budget for it, why isn't it happening?

9 MR. MURRAY: objection.

10 THE WITNESS: Brad's opinion is, like I
11 said earlier, just it's a matter of figuring out
12 how to do it.

13 BY MR. NEW:

14 Q. In all fairness, the money is there,
15 correct?

16 I mean this State has a budget surplus.

17 A. That's correct.

18 Q. So it's not as if that the money to spend
19 looking at the 310 million that we talked about
20 earlier, 60 million for correctional officers and
21 their pay, 250 million for deferred maintenance.
22 There is more than that in the State's budget
23 surplus as of today, correct?

24 A. That's my understanding.

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1 Q. I understand that.

2 And the locks, doors, and locking
3 mechanism were in that 60, correct?

4 A. Yes.

5 (Exhibit No. 11 marked for
6 identification.)

7 BY MR. NEW:

8 Q. All right. Again, you're talking to the
9 Legislature about how the officers are exhausted
10 and you state you're working your people to death
11 and they're quitting because of that, correct?

12 A. Correct.

13 Q. And so you here in this January 19, 2023,
14 article from Metro News is attributing at least in
15 great part the high turnover rate to the working of
16 the people to death, the current staff in the
17 State's jails, correct?

18 A. Yes.

19 Q. And Delegate David Kelly says, A pay hike
20 is the most direct way to address the problems, do
21 you agree or disagree with that?

22 A. I agree.

23 Q. And then he also says, Recruiting is one
24 thing, but retention is something else. And that's

1 is none of those that you would disagree with?

2 A. No.

3 Q. Highest priority is the protection of the
4 public, staff and offenders through the highest
5 degree of professional performance at all times.
6 That's pretty basic, isn't it?

7 A. Yeah.

8 Q. Third bullet, We correct offender behavior
9 first and foremost by modeling appropriate
10 behavior. That -- and by there the "we" is the
11 personnel employed by the Division of Corrections
12 and Rehabilitation, right?

13 A. That's correct.

14 Q. Fifth bullet down, We treat all employees,
15 the public and offenders with fairness, honesty,
16 consideration and dignity while recognizing
17 diversity. That's pretty decent and pretty basic
18 and pretty important, it is not?

19 A. It is.

20 Q. Do you believe that DOCR is currently
21 providing safe, secure, humane conditions in its
22 jails?

23 A. I do.

24 Q. And tell me upon what you base that

1 West Virginia?

2 A. I don't believe so. It was frozen at
3 consolidation but it actually had been 48.25 for a
4 quite a few days prior to that.

5 Q. And as I understand your testimony and
6 I've seen from the news articles, you all -- your
7 Agency moving State prisoners from jails into
8 prisons has improved greatly in about the past year
9 or so, correct?

10 A. Correct.

11 Q. And although 7 of your 10 jails are still
12 over capacity, they are not as bad as they were in
13 about mid '22, is that a fair statement?

14 A. Absolutely.

15 Q. And take a look at the page 45 that you
16 have there.

17 A. Okay.

18 Q. We've established -- do you have any
19 reason to disagree with the capacity of Southern
20 Regional Jail is 468 inmates?

21 A. Correct.

22 Q. And if you look at the average daily
23 inmate population by fiscal year, at no point from
24 fiscal year '10 to fiscal year '19 is Southern

1 Regional Jail at 468 or under, is it?

2 A. No.

3 Q. It is safe to say that the State of
4 West Virginia has known for over a decade that the
5 Southern Regional Jail is overcrowded?

6 A. Yes.

7 Q. And you in your various positions whether
8 it's been as chief of staff or the director of
9 research and information technology, whatever
10 position you've had, you yourself have known that
11 the South Regional has been overcrowded, correct?

12 A. I would say that's true since
13 consolidation.

14 Q. Yes.

15 Does overcrowding pose a risk of harm to
16 inmates?

17 A. It contributes to the safety and security
18 of the facility.

19 Q. That's also -- there is implied in that a
20 risk of harm to inmates?

21 A. Yes.

22 Q. Overcrowding makes a facility less safe
23 than it could be, does it not?

24 A. Yes.

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1 or what was the COVID impact on the number of
2 admissions and releases?

3 A. I think it impacted law enforcement
4 practices. For sure there was less arrestees
5 coming in the back of the jail. Magistrates and
6 judges were doing their jobs differently. And it
7 changed as the lock downs -- the lock downs
8 happened and unhappened and things, so it kind of
9 went back and forth.

10 Q. And do you have page 40 as well, sir?

11 A. I do.

12 Q. And when you look at inmates committed to
13 DCR waiting county regional jails for bed space at
14 DCR facilities, is that part of the backlog that we
15 were talking about earlier?

16 A. That first column there?

17 Q. Yes.

18 A. Yes.

19 Q. For instance, there were 128 males and 21
20 females who were awaiting transfer to prison,
21 correct?

22 A. Correct.

23 MR. MURRAY: Out of Southern Regional
24 Jail?

1 A. There is a process for submitting change
2 orders that exists.

3 Q. And give me an example just a hypothetical
4 of a situation where a medical provider like
5 PrimeCare or Wexford could come to the State and
6 say, we know we bid this to provide the medical for
7 the State of West Virginia, but this situation
8 occurred and we have to submit a change order?

9 A. I cannot remember what change orders were
10 submitted. It would have gone through
11 Administrative Services, I think. I would have
12 known at the time. I cannot remember now. But
13 there were change ordered during my term, yeah.

14 Q. I'm sure. And what I'm looking for is
15 just an example of a situation where a contractor,
16 a medical contractor like PrimeCare or Wexford
17 would submit a change order?

18 A. Honestly, it was not something I would
19 have negotiated, so I just can't recall what
20 situation would have -- at this time I just can't
21 remember what would have initiated a change order.

22 Q. Can we agree that when Wexford became the
23 medical contractor in 2022, that West Virginia's
24 inmate population was overcrowded?

1 A. Yes.

2 Q. Can we agree that when Wexford became the
3 medical contractor for the State of West Virginia,
4 West Virginia's jails, prisons and juvenile
5 facilities were understaffed?

6 A. Yes.

7 Q. What impact, if any, does overcrowding and
8 understaffing have on a medical provider's ability
9 to carry out services?

10 A. I don't know if I'm competent to answer
11 that. I really don't know if I'm competent to
12 answer what ability -- what effect that has on
13 their ability to provide services. If they are not
14 able to provide the services, they should make that
15 known and our contract monitor should make that
16 known. So that would be the fail safe for that, I
17 would think.

18 Q. In providing medical for West Virginia's
19 roughly 30 correctional facilities, how many
20 physicians does Wexford have?

21 A. I don't know. I don't know what their
22 numbers -- I don't know what their staffing numbers
23 are and especially now I would have no idea.

24 Q. Do you know what the numbers were for

1 challenge?

2 A. Not that I can think of.

3 Q. Was overcrowding of our correctional
4 facilities in West Virginia a systemic challenge as
5 of January 2018?

6 A. I need look at the numbers, but they've
7 always been overcrowded.

8 Q. We can do that.

9 Any other systemic challenges or problems
10 that DCR was facing when you first started?

11 A. As I sit here, nothing comes to mind. I'm
12 sure that things were -- I'm sure that things were
13 being brought to me that we were dealing with.
14 Anthony Center comes to mind as something that
15 happened shortly after I got there. That was a --
16 that was something that had to be dealt with.

17 Q. And we're going to talk about Anthony
18 Center.

19 (Exhibit No. 1 marked for
20 identification.)

21 BY MR. NEW:

22 Q. Exhibit 1 it's a November 30, 2017,
23 letter, memo to all correctional employees from
24 Cabinet Secretary Jeff Sandy Re Corrections

1 a similar memo out, correct?

2 A. I never sent a memo like this out.

3 Q. And that's not really my question. My
4 question is were things along these lines bad
5 enough other than the typical grievance, Employee
6 Assistance Program, anything else that you felt
7 like something major had to be done to address
8 these?

9 A. Well, and maybe it's just different
10 styles. I wouldn't send a memo out to 5000 people
11 if I had 20 or 30 bad apples. So I'm just saying
12 that it's always a problem -- if that conduct is
13 going on, it's always a problem. Would that
14 occasion me to send a memo out to the field,
15 probably not. It would occasion me to dig down and
16 get the individual bad actors.

17 Q. Let's talking about some other systemic
18 problems within West Virginia's corrections.
19 Overcrowding, it was bad when you got there in
20 January of '18, correct?

21 A. Correct.

22 Q. Did it improve any before you left?

23 A. Sadly the only time it improved a little
24 was at the beginning of COVID. And then towards

1 the end of COVID, it was bad because we couldn't
2 move people. So did it improve by the time I left,
3 no. When I left it was probably worse.

4 Q. Understaffing at West Virginia's
5 correctional facilities, jails, prisons, juvenile
6 facilities, did it get better in the
7 four-and-a-half years you were Commissioner?

8 A. It got better and then it got worse and it
9 continued to get worse.

10 Q. Again, those trends that Chief of Staff
11 Douglas talked to us about where the recruiting,
12 the retention, the 2 plus 2 plus 2 plus things like
13 that get you down to about 600 or thereabouts in
14 mid 2019, COVID occurs and some other things and by
15 the time that you leave, you've got about a
16 thousand employment vacancies in your agency,
17 correct?

18 A. I need to look at the numbers to make sure
19 but I don't have any reason to think that that's
20 not right.

21 Q. It got better a little bit and then got
22 worse I believe is your testimony, correct?

23 A. Yes.

24 Q. One thing we haven't talked about, you

1 administration prior to Governor Justice being
2 elected, but when you all start to do the
3 consolidation and you're starting from the DOC side
4 to look over at the regional jails and you're
5 looking over at the juvenile facilities and now all
6 of a sudden these are under the Commissioner of
7 DCR, did you ask the question how did we get here?
8 How did we get to 200 million dollars of deferred
9 maintenance?

10 A. I'm sure that everybody asks that question
11 and the answer was we depend on the money that's
12 allotted to us for what can be done.

13 Q. And what was the money being allotted?

14 A. I would have to go back. Every year there
15 is a certain amount that is allotted for
16 maintenance. But it doesn't -- it doesn't touch
17 what the overarching bill is. And I would -- I
18 don't have those figures in front of me and I can't
19 remember. I just know we didn't get what we
20 needed.

21 Q. Chief of Staff Douglas testified that the
22 annual allocation for maintenance was 2.25 million?

23 A. Yeah.

24 Q. At -- and so let's just round that down to

1 Commissioner DOC/DCR, it went from bad to worse in
2 terms of deferred maintenance, did it not?

3 A. Yes.

4 Q. It went from about 190 or 200 million to
5 277 million, correct?

6 A. Yes.

7 Q. And did you hear Chief of Staff Douglas
8 testify that recently there was like a 17 million
9 dollar allocation in additional to the 2.25, did
10 you hear his testimony on that?

11 A. If I did, I don't remember. Was that an
12 allocation after I left?

13 Q. Yes, I believe it was an allocation after
14 you left.

15 A. I don't remember.

16 Q. But even with something like 17 million,
17 and I understood Chief of Staff Douglas to say that
18 higher ed, secondary schools and Corrections were
19 supposed to share in 200 million although he didn't
20 know the breakdown of that?

21 A. I do remember seeing that in the news.

22 Q. Even if Corrections got all of the 200
23 million and the 17, there would still need to be
24 approximately sixty million spent on deferred

1 see if the prisons were full at that time.

2 Q. Okay.

3 So if there is an inmate convicted of a
4 felony at the Southern Regional Jail, he or she
5 needs to go to Mount Olive or some other prison,
6 correct?

7 A. Correct.

8 Q. And if the prisons are full, there is
9 nowhere to take that inmate, correct?

10 A. Hypothetically that would be true, if
11 base -- based on their classification as to where
12 they could go, there could not be a -- it's
13 conceivable there would not be a place and that
14 person has to wait.

15 And that's why those programs that are
16 getting people out of prisons are so critical.

17 Q. And would you agree with me that if
18 prisons are overcrowded, it's going to make the
19 maintenance situation worse?

20 A. Yes.

21 Q. And that's just kind of common sense,
22 isn't it, that if there is a cell that's designed
23 for one person and it has two or three then
24 necessarily the plumbing, the beds, all of the

1 Did I go to -- did I have a meeting by
2 myself with somebody from the Governor's Office?
3 No.

4 Q. No. And I'm not asking about an
5 individual meeting that you had with anyone. I am
6 talking about a group meeting where those concerns
7 were raised with either members of the Legislature
8 and/or members of either the Governor or the
9 Governor's staff and staffing, maintenance,
10 crowding was talked about?

11 A. Well, there may have been general meetings
12 and Brian Abraham may have been there with the
13 Secretary. I can't tell you that that is
14 specifically what that meeting was about. Those
15 issues came up. What normally would come up is
16 what I told you before, we would write a proposal.
17 We would say, can we have locality pay. Here is
18 what we want to do. Here are some options. So
19 that's how it would be presented. And then I -- I
20 know the Secretary had meetings with the Finance
21 Committee and I was not part of those.

22 Q. I asked Chief of Staff Douglas the same
23 question. Where did there seem to be pushback, was
24 it in the legislature or the Governor's Office or

1 A. Yes.

2 Q. -- that you submitted that went nowhere?

3 A. I -- the Secretary's attorney and I
4 drafted a proposed locality bill. I don't remember
5 for what session that was, but we drafted a bill
6 and we asked for it in another separate proposal.
7 We had different ways of trying to do it. One was
8 do it the way they do it in the Eastern -- you
9 know, do it by locality.

10 And then at another time I wanted to try
11 doing it by facility so that the Commissioner could
12 designate at any given time this facility is in
13 crisis, whether it's Huttonsville or somewhere else
14 that's sitting in a place that nobody wants to
15 work. That -- we wrote a bill to that effect. I
16 know it went somewhere, but nothing happened with
17 it.

18 That might have been -- that might have
19 been the last thing submitted before I left. But I
20 knew there were -- you know, there are always
21 options that they're playing with for locality pay.

22 Q. Maintenance, I asked Chief of Staff
23 Douglas this question, State of West Virginia
24 doesn't get \$277 millions in deferred maintenance

1 overnight, does it?

2 A. No.

3 Q. That's been a problem at least a decade in
4 the making, would you agree with that?

5 A. Yes.

6 Q. The overcrowding situation, that doesn't
7 happen overnight, does it?

8 A. No.

9 Q. That problem has been at least a decade in
10 the making, correct?

11 A. Yes.

12 Q. And the understaffing of West Virginia's
13 jails, prisons and juvenile facilities, that
14 understaffing issue doesn't happen just overnight,
15 does it?

16 A. No, but I don't think -- I wouldn't -- I
17 would say that that's been more fluid than the
18 other two problems we've talked.

19 Q. I know that that's been more fluid. If
20 you just look at the Annual Report from FY '19, we
21 see the fluidity just within that one fiscal year?

22 A. Right.

23 Q. It was as low as I think 610 on June 30th
24 of 2019. I've seen Brad Douglas quoted as saying

1 Reinvestment was 2013.

2 Q. '13?

3 A. -- so.

4 Q. Right.

5 So we're now a decade into the enactment
6 of the Justice Reinvestment Act, correct?

7 A. Correct.

8 Q. And yet there are still portions of it
9 that are not funded?

10 A. So I -- I would have to say, I don't know
11 that they are not funded at all, but they are not
12 fully funded. I just know that it's not as robust
13 as it could be.

14 Q. And do you agree with Chief of Staff Brad
15 Douglas that approximately 266 million needs spent
16 on the deferred maintenance and approximately 50 to
17 60 million spent on the staffing for the jails,
18 prisons and juvenile facilities in the State of
19 West Virginia?

20 A. Yes.

21 Q. And that expenditure of some 310, 320
22 million dollars wouldn't that go a long way to
23 correcting the things that so frustrated you as the
24 Commissioner of DCR for four-and-a-half years?

1 A. Yes.

2 Q. So I don't think it would take a better
3 person in the seat, all due respect, ma'am, you
4 said a little bit earlier. I think you could have
5 done a whole lot with 310 or 320 million dollars,
6 don't you agree?

7 A. I think anybody could have in that seat.

8 Q. What else besides the deferred maintenance
9 and the staffing needs an influx of capital?

10 A. Well, I think the -- you know, the influx
11 with the staffing will allow program development.
12 You know, right now you have program people
13 standing security posts. Now, that's more of a
14 prison problem than a jail issue, but -- and the
15 same with a lot of re-entry and programing. We had
16 started and had such high hopes for the jail side
17 of things, but security has to be the first
18 priority and -- so I think -- I think you can see a
19 lot, you know, you could expand on a lot of things
20 if you could take care of those underlying.

21 Q. So downstream from security on things like
22 staffing, conditions with maintenance, things like
23 education, drug counseling, all of those things
24 that people like yourself aspire to and with

1 A. I do not. I know it's over 200 million,
2 isn't it? I don't know.

3 Q. Hopsy Kercheval Tweeted just today that
4 Governor Justice proudly announced a budget surplus
5 of 1.8 billion dollars.

6 A. I guess that is over 300 million.

7 Q. Do you know why with the a budget surplus
8 of 1.8 billion dollars the State of West Virginia
9 is not spending this 310 to 320 million dollars on
10 corrections that's so badly needed and was when you
11 were the Commissioner?

12 MR. MURRAY: Objection.

13 THE WITNESS: No.

14 BY MR. NEW:

15 Q. The spirit is willing but the flesh is
16 weak, you ever heard that?

17 A. I certainly have.

18 Q. Turn over to page 12624 and page 9 of 26
19 of the Lesson Plan.

20 A. Okay.

21 Q. As far back as 1946, the State of
22 West Virginia found the county's jails to be in
23 anachronisms and totally unfit for human
24 habitation. Study went on to recommend that the

1 county's jails be consolidated into regional jails
2 and adequate numbers of appropriately trained
3 staff.

4 And then we see over there in the small
5 print the West Virginia Regional Jail and Prison
6 Authority was established by legislative action in
7 1985. So it only took 39 years, 39 years for the
8 State of West Virginia to come up with a regional
9 jail system, correct?

10 A. That's what it looks like from this.

11 Q. And then from 1985 if you turn over here
12 and look at the order of opening from '85 it look
13 took another 20?

14 A. What? I'm sorry.

15 Q. Page 11 of 26.

16 A. I see it. All right.

17 Q. It took 20 years for West Virginia to open
18 all of the regional jails that it needed, correct?

19 A. Correct.

20 Q. So from 1946 when it was first recommended
21 to June of 2005 by my calculation 59 years it took
22 the State of West Virginia to get around to opening
23 regional jails to make uninhabitable, humanly
24 uninhabitable jails in counties no longer a thing.

1 So West Virginia has known for a long time
2 that it needs to spend money to house and care for
3 inmates, correct?

4 A. Correct.

5 Q. And, in fact, if you look over at the
6 lesson plan page 16 of 26, it's telling people in
7 this training litigation can be daunting. The
8 authority will spend a great deal of time and
9 energy defending a suit. Inmates generally file
10 two types of lawsuits against jails. Suits for
11 monetary damages and suits for declaratory or
12 injunctive relief.

13 And declaratory or injunctive relief
14 specifically mentions in this training
15 overcrowding, correct?

16 A. Yes, I see it.

17 Q. And it specifically lists lack of medical
18 treatment, correct?

19 A. Yeah.

20 Q. And then there on page 17, 18, and 19
21 lists some ways to try to deal with those
22 liabilities posed for monetary damage, lawsuits and
23 declaratory or injunctive relief lawsuits, correct?

24 A. Yes.

1 had you done as Cabinet Secretary to address
2 overcrowding in West Virginia's prisons and jails?

3 A. As stated earlier, we do not have a
4 Holiday Inn no vacancy sign.

5 Q. Nothing you could have done between
6 January 2017 and March of '20, correct?

7 A. Right. That is correct.

8 Q. Are you proud of the \$277 million in
9 deferred maintenance for West Virginia's prisons
10 jails and juvenile facilities?

11 A. Am I proud of that? What I -- I can't
12 answer that question, sir. What I can tell you is
13 that January of '17 I appeared between both the
14 House Finance and the Senate Finance and provided
15 them with what the deferred maintenance was and I
16 did that every year.

17 Q. So it's the Legislature's fault, right?

18 A. I cannot -- they are the ones that provide
19 the budget to get work done -- to get the work
20 done.

21 Q. How much was the deferred maintenance in
22 January of 2017?

23 A. Approximately 200 million.

24 Q. And that figure of \$200 million just

1 didn't develop overnight, did it?

2 A. It had been there for many years, sir.

3 Q. How many years prior to 2017 had the
4 deferred maintenance been in at least tens of
5 millions?

6 A. I do not know, sir.

7 Q. Did you do any investigation of that when
8 you became Cabinet Secretary like, Why am I
9 inheriting an agency that has a \$200 million
10 deferred maintenance bill?

11 A. I did, and I was advised that during the
12 Manchin and the Tomblin's administrations that
13 there was no funding available.

14 Q. You mean all of those coal severance taxes
15 and all of those tax cuts and all of that during
16 the Manchin and Tomblin administrations they
17 couldn't spend money on jail maintenance; is that
18 your testimony?

19 A. No, sir, I would not word it like that
20 because --

21 Q. I'm sure you wouldn't.

22 A. -- I was not there.

23 Q. I guess we can go back just like that we
24 know that there is a \$1.8 billion budget surplus

1 according to the Governor right now, we can look at
2 back at budget surpluses under the Manchin and
3 Tomblin administrations, that's easily done, isn't
4 it?

5 A. I would believe so, sir.

6 Q. Have there been budget surpluses in the
7 Justice Administration prior to 2023?

8 A. Yes, sir.

9 Q. And why hasn't the deferred maintenance
10 bill been caught up on during the budget surpluses
11 of the Justice Administration in which you served?

12 A. Sir, every prior -- prior to every
13 legislative session, we have meetings with the
14 budget office. We provide them with our needs.
15 Our needs were clearly articulated along with all
16 other Homeland Security agencies. They're advised
17 of that. We -- transparent. We told them.

18 Q. So your testimony under oath here today is
19 that from 2017 forward your agency had advised the
20 Legislature that it needed 200 million plus to
21 catch up on maintenance in the State of
22 West Virginia. Is that your testimony, sir?

23 A. Well, I don't want -- everything except
24 for the 200 million plus --

1 Q. I'm using your figure. You said you came
2 in in '17 with it at 200 million?

3 A. Approximately 200 million.

4 Q. Has it been below 200 million since
5 January of 2017?

6 A. I don't have those figures memorized but
7 around 200 million.

8 Q. Regardless of what the figure is whether
9 it's 200, 277, 198, is your testimony under oath
10 here today that every year from January of '17 to
11 present you've presented the budget office with the
12 deferred maintenance bill for West Virginia's jails,
13 prisons and juvenile facilities?

14 A. Correct.

15 Q. And in the Governor's submitted budget for
16 those same years, he would have submitted his first
17 budget to the Legislature in about November or
18 December of '17 for the '18 session, correct?

19 A. Yes, sir.

20 Q. For every budget submitted by Governor
21 Justice has it included money for deferred
22 maintenance?

23 A. There has been moneys provided. At one
24 point we got I believe \$15 million which we did, we

1 Q. Are you proud that there is vacancies as
2 high as 70 percent in some of West Virginia's
3 jails?

4 A. Counsel, you use the word am I proud, I --
5 the -- what my response is, is obviously in January
6 of '20 we were down to 560 some vacancies.
7 According to people who have been around for 30
8 years have the best that it had been for decades.
9 So we were on a path and then COVID hit. I would
10 love to have every vacancy filled.

11 Q. In this 560 vacancies as of January '20,
12 that's the lowest that it ever got during your
13 tenure as Cabinet Secretary for DHS or DMAPS,
14 correct?

15 A. Correct.

16 Q. So that was the best worse that it ever
17 was in January of '20, 560 vacancies?

18 A. According to two individuals with 30 years
19 of experience they stated that that was the least
20 number of vacancies Corrections had had in decades.

21 Q. And a lot of that was the result of what
22 Douglas and others have called the historic
23 legislation, the pay legislation passed around 2018
24 or so, the 2-2-2, correct?

1 allocated for the closure of the Anthony Center,
2 correct?

3 A. Uh-huh. Yes, sir.

4 Q. Was there ever any analysis by DHS or DCR
5 as to whether or not the 2 million per year was
6 adequate?

7 A. All the time, sir. Obviously it's clear
8 that it was not enough.

9 Q. And is that clear by virtue of the fact
10 that the number went from approximately 200 million
11 in 2017 to 277 in 2022?

12 A. I don't know what you mean, sir.

13 Q. In your testimony before the Legislature
14 although not giving a specific number when you were
15 asked about 200 million by the Chairman, you said
16 it's more than that today, and that was in December
17 of '21.

18 A. Uh-huh.

19 Q. What I'm saying is when you testified
20 before the committee, it's more than 200 million
21 today. The fact that that number grew instead of
22 contracted doesn't that indicate to us that the \$2
23 million dollars a year or 2.5 whatever it is is
24 insufficient?

1 BY MR. NEW:

2 Q. -- to spend the 200 million in deferred
3 maintenance plus or the amounts necessary to
4 adequately staff our prisons and jails?

5 A. The Senate placed approximately 380
6 million dollars in a fund and it has given the
7 Governor the discretion to spend that how he deems
8 fit. And we have submitted a few weeks ago a
9 deferred maintenance list and the talk is right now
10 we're going to get a hundred million of that 300
11 and some million for deferred maintenance.

12 Q. And is that the portion of Brad Douglas'
13 testimony where he testified that money was being
14 allocated for higher ed --

15 A. Yes.

16 Q. -- secondary schools --

17 A. Same pot of money.

18 Q. -- or the State BOE, however Brad Douglas
19 said.

20 A. Uh-huh.

21 Q. And Corrections?

22 A. But as of last week we were getting a
23 hundred million of that sum of money.

24 Q. Is that just for deferred maintenance or

1 does that also include staffing issues?

2 A. Deferred maintenance.

3 Q. Is there out of that 380 million money
4 designated to address staffing shortages?

5 A. Out of that money, no.

6 Q. Out of any other pots of money?

7 A. There is talk of a special session in
8 August to -- we have sent six different revisions
9 to them on salary work ranging, the total is
10 ranging from 20 to 27 million for prisons and
11 jails -- that's incorrect, sir. Sorry. I
12 misspoke. For prisons and juveniles, and it will
13 take approximately 10 to 13 million dollars for
14 jails.

15 Again, let the record show that has not
16 been approved by the Speaker and the President.

17 Q. Would that -- that proposal would
18 obviously have to be voted on by the Legislature,
19 the ballpark 30 to 40 million for staffing,
20 correct?

21 A. No, sir. Keep the jails a special
22 revenue. Just prisons, juveniles.

23 Q. With respect -- and I want to make sure
24 that I understand your testimony. For the 100

1 million dollars for deferred maintenance, that
2 money has already been allocated by the Legislature
3 for the Governor to use at his discretion for
4 higher ed, the State Board of Education and
5 Corrections. Do I understand that correctly?

6 A. Correct. And we submitted the paperwork
7 probably early last week as to where -- how we
8 would spend the hundred million.

9 Q. At the risk of sounding ungrateful, if the
10 100 million is spent on deferred maintenance
11 there'd still need to be another 100 or so million
12 spent, correct?

13 A. Yes, sir, and they understand that.

14 Q. What about the staffing, I had -- Douglas
15 had used figures of approximately 40 to -- I'm
16 sorry, 50 to 60 million. I believe Mr. Plumley
17 testified that it could be as high as 100 million
18 for staffing.

19 A. Well, at that time it was 27 and 13. That
20 is 40 million.

21 Q. Yes.

22 A. That's as high as I know it was. Uh-huh.

23 Q. As high as the need or as high as the
24 willingness --

STATE OF WEST VIRGINIA

At CHARLESTON

EXECUTIVE ORDER NO. 5-22

By the Governor

WHEREAS, the number of correctional officers available to staff juvenile and adult detention and correctional facilities is less than what is recommended to operate the State's juvenile and adult detention and correctional facilities; and

WHEREAS, any shortage of correctional officers limits the ability to properly supervise the State's incarcerated individuals; and

WHEREAS, without proper supervision of incarcerated individuals, there may be a danger to the public, a danger to the correctional officers and administrative staff, and a danger to incarcerated individuals themselves; and

WHEREAS, excessive amounts of overtime for existing correctional officers are not conducive to safe working practices and environments; and

WHEREAS, the Secretary of Homeland Security, the Adjutant General of the West Virginia National Guard, and the Division of Personnel have worked to find a solution that helps provide the needed workforce; and

WHEREAS, it is imperative to properly staff and control this State's juvenile and adult detention and correctional facilities, and until there is proper staffing to achieve a safe environment within our juvenile and adult detention and correctional facilities, a State of Emergency exists; and

NOW, THEREFORE, I, JIM JUSTICE, by the authority vested in me as the Governor of the State of West Virginia, do hereby **ORDER** that:

1. A State of Emergency exists in West Virginia as it pertains to the staffing level of our juvenile and adult detention and correctional facilities; and
2. The Adjutant General is hereby ordered to support the Department of Homeland Security with National Guard personnel sufficient to alleviate staffing shortages at adult and juvenile correctional and detention facilities; and
3. The Adjutant General and the Secretary of the Department of Homeland Security are empowered to enter into any agreement, lasting not more than one year, to ensure the proper deployment of National Guard personnel. While the Adjutant General will continue to exercise overall command and control of National Guard personnel, the Secretary of the Department of Homeland Security will provide direction as to the general or specific mission to be accomplished; and
4. Any agreement between the Adjutant General and the Secretary of the Department of Homeland Security may, by agreement, extend the period beyond one year should staffing shortages persist.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol, in the City of Charleston, State of West Virginia, this Eleventh Day of August, in the Year of our Lord, Two Thousand Twenty-Two, and in the One Hundred Sixtieth Year of the State.


GOVERNOR


SECRETARY OF STATE

Gov. Justice: West Virginia shatters all-time financial records with close of fiscal year

6/30/2023



CHARLESTON, WV – Gov. Jim Justice announced today that West Virginia’s cumulative revenue collections for Fiscal Year 2023 will come in at \$1.8 billion over estimate – shattering the all-time record for biggest single-year revenue surplus in state history for the second straight year in a row.



(<https://youtu.be/wTQ38UCcHFQ>)

“This is an unbelievable accomplishment, and is undeniable proof that the days of West Virginia being known as poor, backward, and behind-the-times are over once and for all,” Gov. Justice said. “West Virginia is growing, our people are employed and raising their families here, companies from all over the world are investing in us, and we’ve changed the image of our state to the outside world in a major way.

"All West Virginians should take a lot of pride in this historic announcement, because, at the end of the day, this money belongs to them. The records we've shattered with the close of this fiscal year are all-time historic and will be written into the history books forevermore.

"I'm going to work with the Legislature to take what's left unappropriated and continue to make wise investments in what we know will bring us more goodness, like infrastructure, federal matches, and tourism, because the more we tell the world about West Virginia, the more people will want to live, work, and raise their families here."

At the close of the fiscal year today, June 30, 2023, at midnight, total collections for the historic revenue year will come in at approximately \$6.5 billion – 10% ahead of prior year adjusted collections – marking the first time in State history that final collections for a single year have exceeded \$6 billion.

Severance Tax collections set a record of nearly \$950 million, a 24% increase from the prior year, with taxes from natural gas accounting for roughly 60% of total collections.

Corporation Net Income Tax collections grew at 14% and totaled \$420 million, eclipsing a record set 15 years ago in 2008.

Personal Income Tax collections set a new record of \$2.66 billion, despite a rate reduction of 21.25% that kicked in after the West Virginia Legislature passed and [Gov. Justice signed \(/News/press-releases/2023/Pages/Gov.-Justice-signs-largest-tax-cut-in-West-Virginia-history-into-law.aspx\)](#) HB 2526, the largest tax cut in State history.

Consumer Sales Tax reached an all-time record of \$1.75 billion, growing by about 5.7% from last year, and Interest Income Tax Collections reached an all-time record of more than \$132.4 million.

Summary of all-time records broken in FY 2023:

- General Revenue: \$6.5 billion
- Severance: Approximately \$950 million
- Corporate Net: Approximately \$420 million
- Personal Income Tax: \$2.66 billion
- Consumer Sales Tax: \$1.75 billion
- Interest Income: \$132.4 million

The Fiscal Year 2024 budget

(https://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=2024&year=2023&sessiontype=RS&btype=bill), passed by the West Virginia Legislature and signed by Gov. Justice earlier this year appropriated \$1,165,478,000 of the FY23 surplus. A full list of appropriations is available below.

By law, a percentage of the year-end surplus must be transferred to the State's Rainy Day Fund, this year that amount is approximately \$231 million. This leaves approximately \$454 million unappropriated.

June 2023 total collections are expected to come in at approximately \$580 million.

Additional data on FY 2023 revenue collections **will be posted here next week** (<https://budget.wv.gov/reportsandcharts/revenuereports/Pages/default.aspx>), once all collections are certified.

Summary of Surplus items included in FY 2024 budget:

- Governor's Office - Posey Perry Emergency Food Bank Fund - \$10,000,000
- Department Of Education - Communities in Schools - \$5,000,000
- West Virginia Department Of Economic Development - \$35,000,000
- Division Of Natural Resources - Capital Outlay, Repairs and Equipment - \$52,000,000 Division Of Natural Resources - Current Expenses - \$900,000
- Division Of Highways - Directed Transfer - \$10,000,000
- West Virginia Tourism Office - Tourism - Brand Promotion - \$7,000,000
- West Virginia Tourism Office - Tourism - Industry Development - \$8,000,000
- Governor's Office - Federal Funds/Grant Match - \$282,000,000
- Division Of Culture And History - Current Expenses - \$2,200,000
- Division Of Culture And History - Educational Enhancements - \$500,000
- School Building Authority - \$40,000,000
- Higher Education Policy Commission - Nursing Program Expansion Support - \$20,000,000
- Department Of Education - Jobs & Hope - \$1,600,000
- Department Of Agriculture - Soil Conservation Projects - \$21,060,000
- West Virginia Department of Economic Development - \$38,000,000
- General Services Division - Capital Outlay, Repairs and Equipment - \$5,000,000

- West Virginia Department of Economic Development - Current Expenses - \$500,000
- West Virginia Department of Economic Development - WV Land Stewardship Corporation - \$1,500,000
- West Virginia Department of Economic Development - Back Roads to Appalachia - \$200,000
- Governor's Office - Civil Contingent Fund - \$500,000
- Department Of Homeland Security - Current Expenses - \$800,000
- Adjutant General - Armory Board Transfer - \$3,318,000
- Adjutant General - Civil Air Patrol - \$1,400,000
- Division Of Health - Directed Transfer - \$10,000,000
- Secretary Of Commerce - Jobs for WV Graduates - \$1,000,000
- Division Of Multimodal Transportation Facilities - Current Expenses - \$1,000,000
- Division Of Health - Current Expenses - \$2,000,000
- Secretary Of Administration - Directed Transfer - \$500,000
- West Virginia Schools for the Deaf and the Blind - Fire Protection - \$500,000
- Secretary Of Revenue - Directed Transfer - \$400,000,000
- General Services Division - Consolidated State Laboratory - \$125,000,000
- West Virginia School Of Osteopathic Medicine - \$29,000,000
- West Virginia University - National Cancer Institute - \$50,000,000
- **Total: \$1,165,478,000**

###

Contact Information

Jordan Damron, jordan.l.damron@wv.gov; CJ Harvey,
cj.harvey@wv.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Thomas Sheppheard, Tyler Randall, and Adam Perry, next friend and guardian of Minor child J.P., on their own</p> <p>(b) County of Residence of First Listed Plaintiff <u>Fayette</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Stephen P. New, New, Taylor & Associates, 430 Harper Park Drive, Beckley, WV 25801 (304) 250-6017</p>	<p>DEFENDANTS James C. Justice, Jr., his official capacity as Governor of the State of West Virginia, and Mark Sosaia, in his official</p> <p>County of Residence of First Listed Defendant <u>Kanawha County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
--	--

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016
			<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 1983

Brief description of cause:
 8th and 14th amendment violations

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ _____
 CHECK YES only if demanded in complaint:
JURY DEMAND:
 Yes
 No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 08/08/2023 SIGNATURE OF ATTORNEY OF RECORD: /s/ Stephen P. New

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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_____, a person of suitable age and discretion who resides there,
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_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: